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11 FEDERAL TRADE COMMISSION

12 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 _____)
14 FEDERAL TRADE COMMISSION,)

15 Plaintiff,)

16 vs.)

17 BP AMOCO, PLC,)

18 and)

19 ATLANTIC RICHFIELD COMPANY,)

20 Defendants.)

21 _____)

Case No.: 00 0416 SI

**PROPOSED ORDER DENYING
MOTION OF STATE OF ALASKA
TO INTERVENE**

Date: February 22, 2000

Time: 3:00 p.m.

Courtroom: 4

22 This matter comes before the Court on motion by the State of Alaska to Intervene as a
23 defendant in this proceeding.

1 Upon consideration of the motion, memoranda, and exhibits filed in support thereof and in
2 opposition thereto, and following a hearing on the motion, the Court finds as follows:

3 (1) This is a proceeding under Section 13(b) of the FTC Act, by which the Federal
4 Trade Commission (“Commission”) seeks a full-stop preliminary injunction to
5 prevent defendants BP Amoco, plc (“BP”) and Atlantic Richfield Company
6 (ARCO) from merging until the Commission has had a full opportunity to undertake
7 a plenary review of the merger in an administrative proceeding to be undertaken
8 pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Sections 7 and 11 of the
9 Clayton Act, 15 U.S.C. §§ 18, 21.

10 (2) Alaska has sought intervention as of right under Fed. R. Civ. P. 24(a), asserting (a)
11 that it has a contractual interest in a settlement – the Charter – that it has reached
12 with defendants; (b) a substantial interest in petroleum exploration, production, and
13 development on state lands; and (c) that it has knowledge, evidence, and expertise,
14 that will be relevant to this proceeding.

15 (3) The grounds asserted by Alaska in support of its motion to intervene as of right are
16 not sufficient to allow intervention under Fed. R. Civ. P. 24(a). *See, e.g.,*
17 *Donnelly v. Glickman*, 159 F.3d 405, 411 (9th Cir. 1998); *see generally,*
18 *Arizonans for Official English v. Arizona*, 520 U.S. 43, 66 (1997).

19 (4) Even if Alaska had demonstrated an interest sufficient to allow it to intervene, its
20 alleged interests are more than adequately represented by defendants in this
21 proceeding. *E.g., League of United Latin American Citizens (“LULAC”) v.*
22 *Wilson*, 131 F.3d 1297, 1305 & n.5 (9th Cir. 1998).

1 (5) Alaska alternatively seeks leave to intervene under Fed. R. Civ. P. 24(b)(2). That
2 Rule allows anyone to seek to intervene when that person has a “claim or defense”
3 that has “a question of law or fact in common” with the main action. However,
4 Alaska’s motion expressly disclaims any intent to add any new claims or defenses
5 to this proceeding and its pleadings show that it has no claim or defense of its own
6 to assert. In any event, its claimed interests in this proceeding are insufficient to
7 allow it to intervene under Fed. R. Civ. P. 24(b)(2). *E.g., Donnelly v. Glickman*,
8 159 F.3d at 411. Alaska therefore may not obtain permissive intervention under this
9 provision.

10 (6) Alaska may not invoke its status as a government entity to seek permissive
11 intervention under Rule 24(b)(2). The Rule limits intervention by government
12 officials and agencies to situations in which a party to an action asserts a claim or
13 defense that relates to a law or program or other matter that is administered by the
14 official or agency seeking to intervene. Here, the BP and ARCO settlement with
15 Alaska is not a defense to the Commission’s action. *See, e.g., United States v.*
16 *Borden Co.*, 347 U.S. 514, 520 (1954). Accordingly, Alaska is not entitled to
17 permissive intervention under Rule 24(b).

18 (7) The Court recognizes that Alaska has undertaken its own investigation of the
19 merger, which it concluded with its settlement agreement. The Court would
20 therefore accept from Alaska an amicus brief that addresses the effect of the merger
21 on competition as delineated in Court II of the Commission’s complaint. *Blake v.*
22 *Pallan*, 554 F.2d 947, 955 (9th Cir. 1977).
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1 NOW THEREFORE IT IS ORDERED that the Motion of the State of Alaska to Intervene
2 be, and hereby is, DENIED in its entirety; and

3 IT IS FURTHER ORDERED that on or before March 1, 2000, the State of Alaska may
4 submit an amicus brief to the Court that addresses (a) the effect the proposed merger would have
5 on competition in bidding for leases on state and federal properties on the Alaska North Slope; (b)
6 the effect of the proposed merger on barriers to entry in the North Slope bidding market; and (c)
7 the effect of the proposed merger on BP's incentive and capability to reduce the pace of
8 exploration and development, and ultimately, the amount of crude oil produced.

9 IT IS FURTHER ORDERED that on or before March 15, 2000 any party may submit a
10 memorandum responding to the arguments raised by the State of Alaska in its amicus brief.
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14 UNITED STATES DISTRICT JUDGE

15 DATED:
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